IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 166 of 2000

For Approval and Signature:

THE HON'BLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SMALL INDUSTRIAL DEVELOPMENT BANK OF INDIA - Petitioner(s)

Versus

KRUTI ENGINEERS LTD. - Respondent(s)

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Appearance :
MR RM DESAI for Petitioner No(s).: 1.
MR MEHUL H RATHOD for Respondent No(s).: 1.

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CORAM :THE HON'BLE MR.JUSTICE K.A.PUJ

Date : 29/06/2005

ORAL JUDGMENT

1. The petitioner, namely, Small Industrial Development Bank (CIDBI) has filed this petition under Sections 433 & 434 of the Companies Act, 1956 for winding up of the respondent Company on the ground that the respondent Company has failed and neglected to pay the outstanding dues of the petitioner.

2. It is a case of the petitioner that the respondent Company has requested the petitioner to sanction and grant financial assistance by way of Term Loan not exceeding Rs. 97 Lacs. The petitioner sanctioned and granted financial assistance to the tune of Rs. 97 Lacs under Project Finance Scheme and the sanction letter dated 22.11.1994 was conveyed by the petitioner to the respondent Company. The respondent Company has also executed necessary document in favour of the petitioner. As per the terms and conditions stipulated in the letter of sanction and in the loan agreement, the

respondent Company had to create Mortgage and charge on its immovable property in favour of the petitioner. The respondent Company thereafter, applied for re-schedulement of Term Loan in December, 1996. At that time, it was made clear by the petitioner to the respondent Company that the respondent Company would clear the interest over dues and thereafter, the re-schedulement of loan would be considered. But the respondent Company did not adhere to its commitment of clearing the interest over dues. Hence, the petitioner decided to recall the assistance and informed the respondent Company vide letter dated 01.06.1998 to make payment of the outstanding dues. The petitioner has, thereafter, issued further communication to the respondent Company and still the same has not been complied with. On 01.06.2000, an amount of Rs.1,78,67,260/- was due and payable by the respondent Company to the petitioner together with interest thereon @ 17.5% p.a. along with liquidated damages @ 2% p.a. From

01.06.2000 till payment or realisation.

3. Despite the service of statutory notice, the payment was not made by the respondent Company to the petitioner and hence, the present petition was filed.

4. Even at the time of admission of the petition on 26.12.2001, this Court has observed that as the amount proposed is 1/3rd of the total amount and the installments suggested are not found logical, no financial institution can accept such proposal. However, the Court has not passed the order of advertisement only with a view to give one more opportunity to the respondent Company. Before the said order was signed, a request was made on behalf of the respondent Company that the respondent Company would try to work out some payment and will inform the Court on or before 28.12.2001. Accordingly, on 28.12.2001, the Court had inquired from the respondent Company as to

whether the respondent Company is in a position to deposit the amount around Rs. 18 Lacs with the Registry of this Court. However, no categorical statement was given on behalf of the respondent Company and hence the order admitting the petition passed on 26.12.2001 was signed on 28.12.2001.

5. After the admission of the petition, additional affidavit was filed on behalf of the respondent Company wherein several proposals were given. However, those proposals were not accepted by the petitioner. Since then, as against the huge liability of the respondent Company, no further payment was made till 15.07.2004. On that day, the Court had asked Mr. Mehul H. Rathod, learned advocate appearing for the respondent Company to make positive statement as to howmuch payment the Company is prepared to make to the petitioner. However, no such statement was made and it was submitted to the Court that during the pendency of the petition, 12 Lacs were paid by the respondent

Company and the said amount may be adjusted while considering the proposal and settlement period of 3 years be granted for making payment of the settlement amount to the petitioner. This was however objected to by Mr. R.M. Desai, learned advocate appearing for the petitioner. Considering all these aspects of the matter, the Court has passed order regarding advertisement on 20.07.2004 and accordingly direction was given to the petitioner to issue public advertisement in 'Indian Express' – English Daily – Ahmedabad Edition and 'Phhulchhab' – Gujarati Daily – Rajkot Edition indicating the date of final hearing as 30.08.2004. Publication of advertisement in the Govt. Gazette was dispensed with.

6. Pursuant to the aforesaid order, the advertisement appeared and affidavit of service was filed before the Court on 23.08.2004 along with which newspaper cuttings were also placed on record.

7. It appears that after publication of advertisement, certain negotiations were taken place between the petitioner and the respondent Company. Accordingly, the Bank has given the draft proposal and as per the said proposal, the entire amount of Rs.86.50 Lacs was to be paid by the respondent Company in 20 installments and the installments were to be started from 01.02.2005. On 01.04.2005, two installments were due which would come to Rs. 12.40 Lacs. The Court has, therefore, considered this submission and passed order on 31.03.2005 and directed the respondent Company to make at least payment of Rs.12.40 Lacs as per the draft proposal given by the petitioner to the respondent Company. Despite this order, till this date no amount has been paid by the respondent Company to the petitioner. An additional affidavit was filed by the respondent Company on 22.06.2005 wherein it is stated that on 15.04.2005, the Bank has given an acceptance letter for the One Time Settlement offer

envisaging the payment of Rs.86.50 Lacs towards Term Loan availed of by the Company on the terms and conditions mentioned in the said letter which was also informed to the Company that the Company had to return the said letter within 21 days failing which the Bank reserves the right to withdraw the approval. Pursuant to the said letter of acceptance, the respondent Company has requested the petitioner on 06.05.2005 to change the payment schedule and condition of interest. The petitioner has not given any response to the said letter and negotiations are going on. It is also stated that only with a view to prove the bonafide of the Company, an amount of Rs.4.35 Lacs has been paid by the respondent Company to the petitioner. However, subsequent installment which was due on 15.06.2005 has not been paid by the respondent Company to the petitioner.

8. When the matter has come up for hearing, Mr. R.M. Desai, learned advocate appearing for the

petitioner has made it very clear that the respondent Company has not been making any payment even as per the draft proposal forwarded by the petitioner to the respondent Company nor even the order passed by this Court was complied with. The respondent Company has been adopting delayed tactics and when the matter is placed for hearing, under the guise of certain new formulas, the time is sought for and the matter could not be proceeded with. He has further submitted that he has not been informed by the petitioner to accept any request of adjournment in the matter. He has, therefore, submitted that ample opportunities have been granted by this Court to the respondent Company and yet the payments have not been made. It is, therefore, obvious that the respondent Company has failed and neglected to pay to the petitioner and its financial substratum has gone. The respondent Company is, therefore, required to be wound up.

9. Mr. Mehul H. Rathod, learned advocate appearing for the respondent Company has submitted that even the last minutes efforts are going on and yesterday only i.e. 28.06.2005, a letter was written by the respondent Company to the petitioner wherein it is stated that the respondent Company is agreeable to make the payment as per the Schedule given in the said letter and accordingly, the balance amount of Rs.82.15 Lacs were to be paid in 8 installments commencing from 01.08.2005 and ending on 01.05.2007. A condition was, however, imposed in the said letter that the interest on unpaid one time settlement is not acceptable to the respondent Company and the same may be waived. It is also suggested that this petition should also be withdrawn or be kept under abeyance. Since these terms are not acceptable to the petitioner, there is no question of acting on the basis of this compromise.

10. After having heard learned advocates appearing for the respective parties and after having considered their rival submissions, the Court is of the view that though there is no dispute with regard to the liability, the respondent Company has been changing its stand from time to time and payment has not been made. There is no genuine or bonafide desire on the part of the respondent Company to make the payment to the petitioner and even if the respondent Company wants to make the payment, the respondent Company wants to make the payment as per its own terms which are not agreeable to the petitioner. It is really an irony that at the time when the loan was obtained by the respondent Company from the petitioner, the respondent Company was agreeable to all the terms and conditions which were imposed by the petitioner and necessary documents were also executed to that effect. But now at the time of repayment of loan, the respondent Company wants to dictate its own terms. This terms are not

agreeable to the petitioner. In this view of the matter, the Court comes to the conclusion that the respondent Company has failed and neglected to pay the dues of the petitioner and it has lost its financial substratum. It is not in the interest of the Creditors and members of the respondent Company as well as in the public interest to allow such Company to carry on its business and accordingly, the respondent Company is hereby ordered to be wound up. The O.L. attached to this Court is hereby appointed as the Liquidator of the Company. He is directed to take charge of the assets of the Company after intimating to the Secured Creditors as well as the Directors of the Company and he is further directed to exercise all powers which are vested in him under the provisions of Companies Act, 1956. It is, however, made clear that before appointing the Security Agency and/or the Valuer for the purpose of taking inventory, the O.L. should take prior permission of this Court. He is further directed

to ask the Ex-Directors of the Company to file Statement of Affairs and also undertake exercise of inviting the claims of the Secured Creditors as well as the workers forthwith.

11. With this direction and observation, this petition is accordingly disposed of as allowed with no order as to costs.

12. At this stage, Mr. Mehul H. Rathod, learned advocate appearing for the respondent Company has prayed for stay against operation, implementation and execution of this order for a period of four weeks from today. Mr. R.M. Desai, learned advocate appearing for the petitioner has, however, objected to this request and submitted that even if the respondent Company wants to challenge this order, it can be challenged before the Division Bench of this Court and hence, two weeks time is enough. Considering the request, the operation, implementation and execution of

this order is stayed for a period of three weeks from today. During this period, the respondent Company will not transfer, assign and/or dispose of the property of the Company.

[K.A. PUJ, J.]

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